IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ petition No. 903 of 2002 (M/B)

Surender Kumar s/o Sri Sant Ram
R/O Wing No. 6 Prem Nagar,
Dehradun. ……. Petitioner

Versus

1. State of Uttaranchal,through Secretary,
   Social Welfare Department,
   Government of Uttaranchal,
   Dehradun.
2. District Magistrate/Collector
   Dehradun
3. S.D.M., Dehradun.
4. Zila Prabandhak,
   Uttar Pradesh Scheduled Caste Finance
   Corporation Limited Dehradun …….Respondents

Mr. Ashok Aggarwal, Advocate for the petitioner.
Mr. N.C. Gupta, Standing Counsel for the State of Uttaranchal for respondents 1 to 4.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. P.C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Ashok Aggarwal, Advocate for the petitioner.

Mr. N.C. Gupta, Standing Counsel for the State of Uttaranchal for respondents 1 to 4.

2. The petitioner, Surendra Kumar has filed this writ petition for the following reliefs:

> "(i) to issue writ, order or direction in the nature of certiorari quashing the order of the respondent no. 3 by which respondents are directing to the petitioner for the vacation of the shop.
> (ii) to issue a writ, order or direction in the nature of mandamus by commanding the opposite parties to allow the petitioner to continue his business in the shop in question and not to disturb the peaceful possession of the petitioner.

(iii) to issue a writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstance of the case.
(iv) to award the costs of the writ petition."

3. The allotment of the shop to the petitioner Surendra Kumar was cancelled by the fourth respondent-Zila Prabandhak, Uttar Pradesh Scheduled Caste Finance Corporation Ltd. Dehradun vide order dated 29.07.2001 (Annexure CA-4) as on inspection it was found that the shop was sublet by the petitioner to one Satish S/o Manga Ram.

4. The petitioner is disputing the fact that the shop was sublet by the petitioner to Satish s/o Manga Ram. From the inspection reported Annexure CA-1 dated 13.07.2001, we gather that on inspection Satish S/o Manga Ram was found running the shop which was allotted to the petitioner and on interrogation Satish informed that he was tenant in the shop for the last about ten years.

5. Thus, it is apparent that without deciding that above disputed question of fact as to whether the shop was sublet by the petitioner to Satish S/o Manga Ram, the relief sought by the petitioner in this petition cannot be granted. In the proceedings under Article 226 of the Constitution of India, it is not permissible to decide disputed question of fact as the same would require leading of evidence by the parties. The petition, therefore, is liable to be dismissed.

6. The petitioner however, shall be at liberty to work out the other remedies which may be available to him under the relevant provisions of law.

7. With the above observation, the writ petition stands disposed of.

(P.C. Pant, J.) **(Rajeev Gupta, C.J.)**
04.04.2006 **04.04.2006**

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